

FEDERAL PERSONNEL COUNCIL  
United States Civil Service Commission  
1326 K Street, N. W.  
Washington 25, D. C.

STATINTL

FOR COUNCIL CONSIDERATION

March 27, 1962

TO: Dr. Frederick M. Davenport  
Chairman

FROM: David P. Lawton, Chairman  
Job Evaluation and Pay Committee

SUBJECT: Employment and Compensation of Experts and Consultants (P-638)

# I. ORIGIN OF PROJECT

At the meeting of May 2, 1961, of the Employment Committee, Federal Personnel Council, a subcommittee was appointed to study problems involved in the appointment of Experts and Consultants in Federal departments and agencies. The subcommittee membership was as follows:

Jerry C. Denton, Chairman, Federal Civil Defense Admin.  
Max Reid, Department of Agriculture  
E. A. Stevens, Department of the Interior

The subcommittee agreed that the major problem in this area was in the newer agencies, and asked its Chairman to contact appropriate representatives of the other defense agencies to get their views on this subject for consideration by the subcommittee. While this phase of the assignment was being undertaken, the Federal Personnel Council reorganized its committee structure. The material collected along with recommendations were put in written form by Mr. Denton on December 14, 1961.

Meanwhile, Mr. Leland P. Dock, National Science Foundation, had brought up the question in the Job Evaluation and Pay Committee which decided that an intern should secure first hand information regarding the problems and difficulties incurred by personnel officers in the employment and compensation of Experts and Consultants. Mr. John A. George of the Civil Service Commission talked with representatives of the Office of Price Stabilization, National Science Foundation, Department of Commerce, Department of the Interior, Atomic Energy Commission, and the Department of Defense. This report takes advantage of both Mr. Denton's and Mr. George's work.

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## IX. LEGAL BACKGROUND

a. For years a number of Federal agencies and departments have received special authorities to hire Consultants and Experts under specific conditions. These conditions were usually fairly well spelled out in the authorizing legislation which sometimes was enabling legislation, but usually was appropriation legislation. With these authorizations being given to individual agencies, the responsibility for administering them was necessarily assumed by the individual agencies.

b. In Public Law 600, 79th Congress, approved August 2, 1946, a general authorization was given Federal agencies and departments in the hiring of Experts and Consultants. Section 15 of Public Law 600 states:

"The head of any department, when authorized in an appropriation or other Act, may procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract, and in such cases such services shall be without regard to the civil-service and classification laws (but as to agencies subject to the Classification Act at rates not in excess of the per diem equivalent of the highest rate payable under the Classification Act, unless other rates are specifically provided in the appropriation or other law) and, except in the case of stenographic reporting services by organizations, without regard to section 3709, Revised Statutes, as amended by this Act."

Practically all Federal agencies have authority to hire Experts and Consultants under this Section of Public Law 600. It now appears to be standard legislative practice to include an authorization for such appointments in all enabling legislation for new Federal agencies.

c. In recent years through executive orders and legislation the Civil Service Commission has been required to make inspections of Expert and Consultant appointments in various Federal agencies and to report its findings to the President.

## THE PROBLEMS IN EXPERT AND CONSULTANT APPOINTMENTS

Down through the years many problems have arisen in administering the various Consultant and Expert authorizations. Federal agencies and departments sought solutions to their individual problems usually by securing a decision of the Comptroller General. As a result of this practice the number of Comptroller General decisions regarding appointments of Consultants and Experts are numerous. Since many of these decisions are given in connection with a specific authorization for Consultant and Expert appointments for a special purpose in an individual department or agency, there is always the question as to whether the Comptroller General's decision applies to similar appointments being made in other departments or agencies under other authorizations.

Examples of some of the major areas where administrative problems exist are:

a. Employment process. Various departments and agencies are using different approaches to the appointment process. In some agencies, all Consultants and Experts are given "Excepted appointments" and the Standard Form 50 is used as the official appointing document. In others, the employment of Consultants and Experts is considered as a contract and a formal contract form is prepared. In still others, the employment document is a brief letter of employment which cites the employee's name, title, salary, dates of employment and a brief paragraph on the legal authority for such appointment.

b. There is very little agreement between the various agencies and departments on definitions of and distinctions between Consultants and Experts. In some agencies the terms Consultant and Expert are considered almost synonymous and are used interchangeably. In others an attempt has been made to make a rigid and clear-cut distinction between the two terms.

c. Probably one of the most confused areas and most difficult areas to administer is to distinguish between "temporary" and "intermittent" Consultants in terms of Section 15 of Public Law 600. Under legislation an intermittent Consultant can draw per diem and travel between his home and place of business. He also can receive retired pay from a branch of the armed services while being paid as an intermittent Consultant with a Federal agency. The problem in this area is determining an adequate cut-off point between intermittent and full time Consultants (i.e., if a person works 15 days a month consistently, is he full time or intermittent?).

d. The use of Consultants and Experts to perform classified duties presents a problem. Many agencies have operated under the assumption that an Expert may occupy a classified position. A Comptroller General Decision, B-108199, dated June 7, 1951, to the Secretary of Commerce rules that in certain instances in the Department of Commerce this cannot be done, but it is not clear from such a decision whether this applies throughout all Federal agencies.

e. Some departments and agencies have determined that Experts and Consultants are not covered by the Social Security Act as amended by Public Law 734, 81st Congress, since they are contract employees. Other departments and agencies do not consider Consultants and Experts as contract employees and have made the employees serving under such appointments subject to Social Security.

f. There are innumerable problems in connection with Consultants and Experts earning leave, receiving overtime pay and the like. Many of these problems have been resolved fairly clearly through Comptroller General decisions, but again, it takes considerable research to find appropriate decisions to answer all such questions.

#### IV. FINDINGS

Findings in the two reports as discussed in the Committee brought out the following tentative conclusions and recommendations:

a. Inconsistencies exist not only among the departments and agencies, but even among the operating bureaus and divisions within the same department.

b. The Committee agreed that no step in the interest of greater uniformity should be taken which would impede the agencies in the hiring and processing of highly-trained personnel whose services are of a unique nature and therefore demand special treatment. The essence of the case is that Experts and Consultants are employed in order to bring an agency certain knowledges, skills, or perspective which the agency itself does not have on a regular basis.

c. In accordance with this view, it was thought that amendments of legislation would not be the answer, for the present at least.

d. Some material on compensation of Experts and Consultants has been put in draft form by the General Accounting Office and will be reviewed shortly by the Committee.

e. In view of the fact that Consultant and Expert appointments are rather common in many of the Federal departments and agencies and in view of the fact that many such appointments are made in new agencies at the time they are just beginning to establish their policies and procedures and have few agency guide lines in writing, it appears that the Civil Service Commission could render a real service if it would issue advisory material, as guide lines to agencies, setting forth the basic legal restrictions currently existing on Expert and Consultant appointments.

The original subcommittee, headed by Mr. Doner, thought that not only is this a service which the Commission could render, but to those agencies whose Expert and Consultant appointments are now subject to Commission inspection, it is felt that the issuance of basic regulations and guide lines is an obligation of the Commission. It is not felt that the Commission should operate an inspection program in an area where it has not published adequate guide lines for the agencies.

The Job Evaluation and Pay Committee on the other hand expressly stated that such materials should be informational and not mandatory. It would be expected of course that the Committee and a representative of General Accounting Office would work with the Commission in preparing such guides.

#### Recommendation

It is proposed that the Council endorse the idea that the Commission and the General Accounting Office work with the Committee in the preparation of advisory material as guide lines to departments and agencies on the employment and compensation of Experts and Consultants.

General Instructions

Placing the right employee in the job best suited for his qualifications is the aim of any successful Career Management Program. The in-service training of employees selected for career development is a corollary. The Career Management Report is designed expressly to assist in achieving these two objectives within this organization. These reports will be prepared by the reporting official in conjunction with the performance ratings (90 days after entrance on duty, 6 months after any change in grade, change in job series, and annually thereafter) and will be routed through supervisory channels for forwarding to the Personnel Office. The reporting officer is defined as the employee's immediate supervisor, in other words the person who is presumably best acquainted with the employee's work. However, depending upon circumstances, the reviewing official may not wish to entrust the immediate supervisor with this responsibility. In any case, the reviewing official will change or modify the report of the reporting official when such modifications or changes are called for. The reviewing official is automatically responsible for the accuracy of facts and statements which appear on this report. In many cases, especially in smaller units, the reviewing official may wish to fill out the reports himself.

In addition to the reports required above, the following special report utilizing the same form will be rendered:

- a. Upon relief or reassignment of the reporting official
- b. Upon determination or recommendation that an employee in a field station should be reassigned to another station or returned to headquarters for reassignment or other disposition. Such report will be forwarded so as to reach headquarters at the earliest possible date after such reassignment determination is made. If possible the report should be sent in at least three months prior to proposed reassignment in order that all time possible may be devoted to appraisal and evaluation. Items 1, 5, 6, 7, and 8 will be filled in as far as possible by the reporting official without referral to the employee.

Opinions expressed in the Career Management Report <sup>will</sup> should be fair and accurate. The evaluation expressed is a direct reflection on the professional ability and integrity of the reporting official and must be carefully and accurately prepared if they are to be of value. Biased opinions based on personal likes and dislikes must be scrupulously avoided.

No reports will be rendered covering periods of less than 60 days observed service unless specifically requested. Reports will normally be classified confidential, however the classification may be raised if deemed advisable by the reporting officer.

UNDER NO CIRCUMSTANCES IS THIS REPORT TO BE SHOWN OR DISCUSSED  
WITH EMPLOYEE